

REMARKS

The Examiner mailed a non-final Office Action dated October 2, 2008 to the Applicant. Claims 9-32 were pending in the application. Claims 9-32 were rejected by the Examiner. The Claims 9-32 remain unchanged. The Applicant submits that based upon the remarks below, Claims 9-32 are in condition for allowance.

Two Month Extension of Time

The Applicant hereby submits an attached petition for a two month extension of time. In addition, the required fee for the two month extension of time is also included herein.

Claim Rejections Under 35 U.S.C. §102(b)

Claims 9-32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,887,712 ("Wells"). Also, Claims 9-32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,442,950 ("Wilson").

The Examiner states the following for both Wells and Wilson with regard to the ramp 19 employed in the present invention:

Although it is not explicitly taught to be used for the purpose of riding a ramp surface on the container end wall to urge the pull tab into sealing contact, the referenced invention teaches all structural elements of the claimed invention, and therefore is capable of performing in the intended manner. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

The Applicant respectfully disagrees with both of these rejections. With regard to Wells, the Examiner argues that the spike 36 could be used as a ramp 19 for the same purpose and function. The Applicant disagrees with the Examiner that the spike disclosed in Wells could be used as a ramp. First, the spike is formed on the underside of the tab 31, not the container as

disclosed in the present invention. In fact, the ramp is integrally formed or attached to the container as disclosed in the present invention and not the tab. For these reasons, the Applicant submits that Wells does not “satisfy the claimed structural limitations” as required by Ex parte Masham. Second, the primary purpose and function of the spike 36 is to facilitate the release of pressure as disclosed in the passage recited below.

Pressure release is accomplished by manually pressing down the tab finger portion 35 to force the spike 36 into the well 37, rupturing the relatively weakened bottom of the well and releasing fluid pressure from the container 25.[Col. 4, lines 47-51]

Third, the size, shape, and construction of the spike prevents it from functioning the same way and with the same result as the ramp 19 of the present invention. In other words, the spike of Wells is not capable of performing in the intended manner as the ramp, as required by Ex parte Masham. Based upon these arguments, the Applicant believes that Wells is not an applicable reference and the rejection should be withdrawn.

With regard to Wilson, the Examiner refers to “a shaped member (the portion about rivet 14) comprising a ramped surface” in Fig. 10. Upon review of Fig. 10, it is not clear what portion about the rivet the Examiner is referring to. In addition, since the portion about the rivet is not numerically labeled, there does not appear any reference to the purpose and function of the shaped portion similar to the ramp 19 of the present invention. The Applicant asks the Examiner for further clarification of the shaped portion. In addition, the Applicant would add that there is no discussion of any specific purpose or function of the shaped member.

Accordingly, the Applicant respectfully submits that based upon the remarks above, Claims 9-32 are believed to be in condition for allowance.

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Reply to Office Action dated October 2, 2008

Corresponding action is respectfully solicited.

PTO is authorized to charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our account #02-0900.

Respectfully submitted,

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